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LOCAL GOVERNMENT

BULLETIN

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# HIGHLIGHTS OF THE LINE FENCES ACT, 1979

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Ontario Ministry of Intergovernmental Affairs

Hon. Thomas L. Wells  
Minister

D.W. Stevenson  
Deputy Minister

Local Government Division  
Municipal Administration Branch

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To the Municipal Clerk:


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## INTRODUCTION

Line fences have been a concern of legislatures since the first parliament passed an act on the subject in 1793. Five further acts were passed between 1834 and 1874, with a hiatus until The Line Fences Act of 1913, which remained unchanged with only one minor amendment for the next sixty-five years. That Act has now been replaced by the Line Fences Act, 1979, which will come into force on September 12, 1979.

While the legislation still governs boundary fences and the resolution of disputes regarding them, it also reflects the changes in the nature of Ontario municipalities and in the rights and responsibilities of individuals. It incorporates a number of suggestions received from municipalities and associations following the introduction and circulation of Bill 135 in 1978.

This bulletin has been prepared for the guidance of members of staff of Ontario municipalities in the execution of their duties. It is not a substitute for the statutes with which it deals. For explicit and complete wordings, the reader should refer to the statutes themselves, ensuring that they are up-to-date and include all amendments. A solicitor should be consulted for assistance in interpreting the provisions of the statutes when a question arises.



### GENERAL

A line fence is a fence that marks the boundary between an owner's land and adjoining lands.

The terrain may make it impractical to construct such a fence exactly on the boundary, but putting it wholly or partly on one owner's land does not affect title to the land (section 7).

The main purpose of the Act is to govern three situations where disputes arise.

1. Where an owner wants a ruling, or "award", as to who is responsible for construction, maintenance and costs.
2. Where a neighbour fails to obey a ruling or "award"; for example, by not maintaining his part of the fence.
3. Where an owner feels that his neighbour has not complied with an award, generally by not doing the work satisfactorily.

Note that The Line Fences Act, 1979, now covers all municipalities, including regional, metropolitan, and district municipalities and the restructured County of Oxford (section 22). It applies to land owned by the Crown (section 23 (1)), municipalities and local boards, including conservation authorities (Section 22 (1)). It does not apply to public highways (Section 24) or unpatented Crown land, (Section 23 (2)).



LAND OWNERS: RIGHTS,  
RESPONSIBILITIES, RECOURSE

According to section 3, an owner may construct or maintain a line fence, subject of course to any municipal by-laws governing the type and nature of a fence.

The easiest way for an owner to avoid disputes and provide a basis for settlement is to enter into a written agreement with his neighbour.

Section 16 allows such an agreement to be registered and enforced. Under section 22(3) municipalities and local boards may also enter into agreements with their neighbours and section 16 can apply to those agreements also.

Most people do not have written agreements with their neighbours about fences. If that is the case, and an owner wants a line fence built, maintained or reconstructed and part of the job done or paid for by his neighbour, he may use fence-viewers to settle the matter (section 4(1)). The owner notifies the clerk of his local municipality that he wants fence-viewers to settle the matter. Within three weeks he and his neighbour will receive notice (hand-delivered or by registered mail) that fence-viewers will view and arbitrate. The date of the viewing will be no later than 30 days from when the owner notified the clerk (section 4(3)).

If the notice is received by an occupant who is not the owner, he must notify the proper owner or be himself liable (section 5).

As a result of viewing and arbitrating, an AWARD is made describing what the owner and his neighbour must do and/or pay. Under section 8 a certified copy of the award will be sent by registered mail to the owners and occupants of the land.

The owner or his neighbour may be dissatisfied with the award. If so, section 9 sets forth the procedure for appeals. The dissatisfied owner has 15 days from receiving a copy of the award to appeal. He appeals by serving a notice of appeal on his neighbour and the fence-viewers, and by filing copies of each notice together with an affidavit of service with the clerk of the small-claims court. The judge will hear the appeal and make a binding decision, including apportionment of any costs that may be incurred.



The decision will be treated the same as an award. The person who appeals may be ordered to deposit sufficient money with the clerk of the court as indemnity against these costs (section 9(6)).

It is possible that the award may not be obeyed. Section 11 takes care of that possibility by allowing either owner to serve notice (registered mail or hand-delivered) upon the other, requiring him to obey the award or decision. Two weeks are allowed to obey the notice, after which the owner who wanted to enforce the award may do the work himself. An important change from previous legislation is that under section 11(4) persons doing work in these circumstances have right of entry onto property, and obstructing or threatening to obstruct them is an offence liable to a fine of up to \$1,000.00 (section 11(5)). In order to recover the value of work done, an owner may immediately initiate proceedings to obtain a CERTIFICATE as described in the next paragraph.

Section 11 gives the neighbour 28 days to pay for his share of costs in the original award. After that period the owner may notify the clerk of his local municipality that he wants a CERTIFICATE of default and value. The owner and neighbour receive notices that fence-viewers will attend and certify at a specified date, and after the certificate has been deposited with the clerk, they shall receive certified copies in the same manner as an award (section 12).

In order to collect money due to him, section 12 gives the owner two choices. First, under section 12(5) he may apply to the municipal clerk to have the amount collected in the same way as taxes, although the money may be paid to him sooner if the municipality has passed a by-law to that effect and he applies to the treasurer for payment under it. Second, under section 12(9), he may file copies of the award and certificate, certified by the municipal clerk, with the clerk of the small-claims court, where it may be levied against goods and chattels.

The final situation that may occur is non-compliance (section 13) where an owner feels that the work done by his neighbour differs from what was specified in the award. In this situation the owner may serve notice on his neighbour, specifying how the work fails to comply with the award, and requiring him to



comply. If this notice is not obeyed, the owner may require the fence-viewers to attend and make a DETERMINATION WITH DIRECTION. Procedures to do so are the same as the original procedures under section 4 that lead to an award. A determination with direction has the same effect as an award, as the legislation makes clear by stating that the enforcement provisions of section 11, the collection procedures of section 12, and the provisions of section 8 for the deposit and certification by the municipal clerk all apply to the determination.

Occasionally, circumstances may arise where no award can be made, such as the fence-viewers not having jurisdiction or proper procedures not followed. It is also possible that the two owners request that no award be made. According to section 14, the fence-viewers prepare a written decision with reasons and deposit it with the clerk in the same manner as an award.

Sometimes an owner wants to take down a fence or dismantle work done. If the owner wants to take down the work because of non-compliance with an award, section 13(1) prohibits him from doing so unless he follows the proper procedures of notice and attendance of fence-viewers. Section 20 deals with removal of fences, and generally allows such removal six months after notice of intent is given to the neighbour. The period is less if an award has been made under this Act and the neighbour refuses to pay. However, if the neighbour does pay the amount awarded under section 7, according to section 20 the fence shall not be taken down.

Section 21 provides for the circumstances where a tree falls across a line fence. The owner of the land where the tree stood is responsible for its removal and the repair of the fence. If he does not do so within 2 days after written notice, the neighbour may do it himself. What is more, he may keep it as partial compensation (and recover the rest of the cost) and has right of entry onto land to remove it. Disputes in this matter are subject to arbitration by fence-viewers.

According to section 15, an award and certificate may be registered in a land-registry office by registering a duplication document, or a copy verified by affidavit and accompanied by an affidavit of execution.



## FENCE-VIEWERS: DUTIES AND RESPONSIBILITIES

Three fence-viewers are required to arbitrate disputes. At least one of them must be from the municipality where the property of each owner lies (s.1).

Their job is to resolve disputes regarding boundary fences. They physically inspect the properties and any existing boundary fence, consider legal or other factors, and make a written decision in the form of an AWARD (section 7), CERTIFICATE (section 12) or DETERMINATION WITH DIRECTIONS (section 13), depending on the situation.

Fence-viewers are notified by the municipal clerk under section 4 of the date that they are to meet and arbitrate. The act provides for a gap of at least one week after notice is served, which allows them time to make appropriate arrangements. Section 6 states they shall "examine the premises and, if required by either owner, shall hear evidence and may examine the owners and their witnesses under oath." Their decision is in the form of an award signed by two of them, as detailed in section 7, specifying where the fence is to be located, the description of the fence, the nature of construction or maintenance work and who shall do it, who shall pay what portion of the costs of the work and of the proceedings under the Act. Note that section 7(1)(b) provides for an equal share of costs of maintaining a fence unless such a split would be unjust. Note also that the liability of the Crown is limited to 50% according to 24(3). Section 7(3) notes that if a municipality has made a by-law concerning height and description of fences, the award must conform to such by-law. Most urban municipalities have such a by-law under section 354(19) of The Municipal Act, and fence-viewers must therefore be aware of its provisions. Terrain may dictate the location of a fence on other than the boundary line, in which case the fence-viewers may hire a surveyor. According to section 8, they must deposit their award with the municipal clerk.

If the award is appealed (section 9), they may be required to appear before the judge of the small-claims court and testify.



When an owner institutes proceedings for default under section 11, because an award was not obeyed, fence-viewers receive notice from the municipal clerk that they must meet again. The date can be no sooner than one week after being notified. This allows them time to prepare and, if any cannot be available, gives the clerk time to get a substitute. According to section 12 they must first satisfy themselves that proper notification was made by an owner to his neighbour and, if such is the case, inspect the work to determine whether a default actually took place and how much should be paid by each party for the work and the cost of proceedings. This decision is written in the form of a certificate deposited with the municipal clerk.

The third type of dispute is in regard to lack of compliance with specifications of an award and is dealt with under section 13(6). The fence-viewers determine what work is necessary in order to comply with an award and set forth their decision in a determination with directions, which also states the share of the fees each party must pay. A determination with directions is handled in a similar manner to awards, being deposited with the municipal clerk.

Note that, when no award, certificate or determination with directions is made, fence-viewers must still deposit with the municipal clerk a written decision and reasons therefor, and specify who pays their fees (section 14). This covers situations where the fence-viewers have no jurisdiction, where proper procedures have not been followed and where the owners request no award be made.

In the case of trees falling across boundary fences, section 21(4) states that three fence-viewers adjust all questions and disputes, with the decision of any two of them being binding.

Where there is an unopened road allowance between lands of two owners, section 18 commands the fence-viewers, when called upon, to divide such allowance equally and have each owner construct and maintain a fair share of the fence. Note that in this case the fence-viewers cannot be called upon without the approval of the council of the municipality.



COUNCIL: DUTIES AND RESPONSIBILITIES

Section 2 states "The council of every local municipality shall, by by-law, appoint such number of fence-viewers as are required to carry out the provisions of this Act and the by-law shall fix the per diem remuneration to be paid to the fence-viewers." As can be seen by other provisions, if a dispute concerns two properties in the same municipality, the minimum number of fence-viewers is three. No maximum number is set, nor are there restrictions on length of term or qualifications of fence-viewers. If a municipality never has any disputes it is not necessary to appoint fence-viewers.

According to section 4(2) and other provisions, council may designate a person other than the municipal clerk to give notices to fence-viewers and others.

Section 7(3) refers to the fact that council may pass by-laws under The Municipal Act prescribing the height and description of lawful fences, and section 12(6) permits them to make a by-law so that an owner may obtain payment, in respect to an award or certificate, from the treasurer before the amount is collected as taxes.

According to section 17 council must pay fence-viewers' fees; however, they must wait until the time for an appeal has passed or until the written decision of the fence-viewers (award, certificate or determination with directions) has been filed. If the person(s) who must pay these fees do not pay forthwith, then the municipality must pay the fence-viewers and collect from the owners in the same manner as taxes.

Section 17 applies to fees of surveyors. In addition, under section 10, a judge's expenses in respect to appeals are payable by the municipality, collectible the same as fence-viewers' fees.

In the case of unopened road allowances, proceedings to call upon fence-viewers must be approved by council, according to section 18(2).

The Line Fences Act applies to lands owned by the municipality (section 22). However, Councils may enter into agreements with neighbouring landowners in respect of line fences on land owned by the municipality (section 22(3)).



Council may pass a by-law under section 354(1), para. 21 of The Municipal Act, which permits councils to pass by-laws "for determining how costs of division fences shall be apportioned, and for providing that any amount so apportioned shall be recoverable under The Summary Convictions Act, provided that, until a by-law is passed, The Line Fences Act applies". If such a by-law has been passed, the provisions of The Line Fences Act in regard to the apportionment and enforcement of costs do not apply (section 25).



# MUNICIPAL CLERK: DUTIES AND RESPONSIBILITIES

The main duty of the municipal clerk under this Act is detailed in section 4, subsections 2 and 3. After being notified by an owner of the desire for arbitration, the clerk (or other person designated by council) shall notify the owner and his neighbour that fence-viewers shall meet on a specified date to view and arbitrate. He must also notify the fence-viewers that their services will be required at a specified time and place. The meeting date must be within 30 days of the date the clerk has received notice from the owner that arbitration is desired. Since he is required to send signed notices to owners and fence-viewers at least a week before the specified meeting date, he has 23 days in which to notify all concerned. Notices may be sent by registered mail or by hand-delivery to owners or occupants or a person over eighteen residing at their premises, but must be delivered to fence-viewers in person.

The second major duty, as covered in section 8, is to receive awards, certify them, and forthwith send certified copies by registered mail to the owner and his neighbour. If lands are in different municipalities, he shall forward a certified copy to the clerk of the other municipality. If no award is made, he receives the decision and handles it in a similar manner.

In the case of an award not being obeyed (section 11), notices are sent in similar manner to the owner, his neighbour and the three fence-viewers to meet at a date not less than one week from the service of notice. Again the fence-viewers must be allowed at least a week before they meet. Note that under section 11(10) if any of the three fence-viewers cannot attend, the clerk shall notify another fence-viewer to attend in his place.

The clerk receives, from the fence-viewers, the certificate of default made according to section 12, and forwards certified copies as though it were an award under section 8, and the same procedures apply to a determination with direction made under section 13. A decision where no award is made (section 14) is also covered by section 8.

If the clerk receives a written application for payment from the owner, together with certified copies of the award or certificate, according to section 12(5) he must place the amount on the



collector's roll to be collected in the same manner as taxes. A by-law (section 12(6)) may provide for payment to the owner by the treasurer directly and, if so, the amount collected on the roll is due to the municipality.

According to section 17, if fees of fence-viewers, surveyors and witnesses are not paid forthwith, the amount unpaid shall be placed on the collector's roll to be collected in the same manner as taxes. If the land of the person who is to pay is in another municipality, the clerk of the municipality shall notify the clerk of that other municipality, and it shall be placed on the collector's roll and amounts received (including interest) shall be remitted to the clerk of the first municipality (section 17(3)).

The Act does not say what the most important job of the municipal clerk really is in the matter of line fences, and that is heading-off trouble between neighbours.

What happens is this. A wants to put up a line fence, but B likes the unspoiled view, so B calls the municipal clerk. The clerk can show B that A has the right to have a fence under the Act. Furthermore, A can also use the Act to make B pay for a share of the construction and maintenance of the fence. Not only will B probably have to pay half of these costs, but also at least half of the costs of fence-viewers or others if proceedings have to be brought under The Line Fences Act, 1979. By showing B the various options and costs, the municipal clerk can be of great service. A and B won't be better friends, but at least they may settle the matter between themselves.



UNORGANIZED TERRITORY

While the Act generally does not apply to lands in unorganized territory, the Lieutenant Governor in Council is empowered to make regulations to provide for how costs of line fences are to be shared and recovered.

Furthermore, The Line Fences Act, 1979 contains some provisions in regard to unorganized territories. Section 1(3) states that where one property is in unorganized territory, three fence-viewers are appointed by the local municipality and one must be resident outside the municipality in the vicinity of the property. Under section 17(4), where fees paid by a municipality are recoverable from a person whose property is located in territory without municipal organization, the amount may be treated as a personal debt.



### SUMMARY

Although the options and procedures may seem somewhat complex, they are essentially straightforward.

- A line fence will be erected if either land-owner wants it.
- Owners are responsible for constructing and maintaining fences, normally on a 50-50 basis.
- If an owner refuses to do his part, the other owner can do it for him.
- Fence-viewers resolve disputes by making an award, certificate of default, or determination with directions.
- Municipal councils engage these fence-viewers by by-law and may also make by-laws about fences or concerning allocation and recovery of costs of line fences.
- Municipal clerks receive notices from owners, set dates for arbitration and notify all concerned.
- Clerks also receive decisions in the form of awards, certificates or determinations with directions and send certified copies to interested parties.
- Appeals may be made to the small-claims court.
- Each owner will eventually have to pay his fair share of all costs, even if it is necessary to have the unpaid amounts placed on the collector's roll as a charge against property and collected in the same manner as taxes.
- This Act applies to all lands including municipal and Crown land in right of Ontario with exceptions where noted.

The Line Fences Act, 1979, and all of its provisions and costs can be avoided when detailed written agreements are made between two neighbours in respect to boundary fences, or when they settle the problem between themselves.

As with all legislation, up-to-date copies of the statutes themselves should be consulted for complete and precise wording, and the advice of a solicitor sought for interpretation or other legal questions.







This bulletin was prepared in the:

Municipal Administration Branch  
Ministry of Intergovernmental Affairs  
56 Wellesley Street West  
Toronto, Ontario  
M7A 1Y7 Tel. 416-965-3514

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(519) 756-0360

ORILLIA

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(807) 475-1621



